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09/992,610	11/19/2001	Anthony J. Hadala	1181-01	7580

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EXAMINER

JACKSON, ANDRE K

ART UNIT

PAPER NUMBER

2856

DATE MAILED: 11/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Offic Acti n Summary</b>	Applicati n N .	Applicant(s)	
	09/992,610	HADALA, ANTHONY J.	
	Examiner Andre' K. Jackson	Art Unit 2856	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<b>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</b>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input type="checkbox"/> Responsive to communication(s) filed on _____.			
2a) <input type="checkbox"/> This action is <b>FINAL</b> .                    2b) <input checked="" type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-30</u> is/are pending in the application.			
4a) Of the above claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>1-30</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are: a) <input type="checkbox"/> accepted or b) <input type="checkbox"/> objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).			
11) <input type="checkbox"/> The proposed drawing correction filed on _____ is: a) <input type="checkbox"/> approved b) <input type="checkbox"/> disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
<b>Priority under 35 U.S.C. §§ 119 and 120</b>			
13) <input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) <input type="checkbox"/> All    b) <input type="checkbox"/> Some * c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application). a) <input type="checkbox"/> The translation of the foreign language provisional application has been received.			
15) <input type="checkbox"/> Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.			
<b>Attachment(s)</b>			
1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)		4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____.	
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)		5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)	
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>4</u> .		6) <input type="checkbox"/> Other: _____	

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:
  - Page 10, line 3 --materials-- should be inserted after "eutectic".
  - Page 15, line 8 "to" needs to be deleted.
  - Page 8, to keep uniformity it is suggested that the applicant keeps "Figure" as all lower case or all upper case letters.

Appropriate correction is required.

### ***Claim Objections***

2. Claim 5 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is a duplicate of claim 4.
3. Claims 1,7,13 and 17 are objected to because of the following informalities:

Claim 1 on page 17, line 17 --and-- needs to be inserted after ":".

Claim 7 on page 18, line 2 the term "device" should be plural.

Claim 13 on page 18, line 28 --than-- needs to be inserted after "less".

Claim 17 on page 19, line --to-- needs to be inserted after "F".

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

5. Claims 9,10 and 15-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 9, claim lines 2 and 3: phrase "low humidity" is a relation phrase. The claim fails to provide a definition of what value constitutes a "low humidity" condition.

Regarding claim 15, claim line 4: range within a range, the claim recites both a broad range and a narrow range within the broad range.

Regarding claim 16, claim line 2: range within a range, the claim recites both a broad range and a narrow range within the broad range.

Regarding claim 19, claim line 4: range within a range, the claim recites both a broad range and a narrow range within the broad range.

Regarding claim 20, claim line 2: range within a range, the claim recites both a broad range and a narrow range within the broad range.

Regarding claim 30: Claim 30 is dependent upon itself.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Paron et al.

Regarding claim 23 Paron et al. discloses a sealed container, for when in use, containing a liquid under pressure, the sealed container having an exterior surface, the exterior surface of the sealed container having a heightwise dimension and a widthwise dimension and at least one temperature-measuring device positioned heightwise dimension on said exterior surface, provided further that said temperature-measuring device measures temperatures in the range of about 34°F to about 94°F (Figure 2).

Regarding claim 24, Paron et al. discloses where the device measures temperatures in the range of about 34°F to about 80°F (Figure 1).

Regarding claim 25, Paron et al. discloses a flexible band temperature-measuring device capable of determining a 2°F temperature change in the range of about 34°F to about 94°F (Figure 1).

Regarding claim 26 Paron et al. discloses where the device measures temperatures in the range of about 34°F to about 80°F (Figure 1).

8. Claims 23 and 24 are rejected under 35 U.S.C. 102(a) as being anticipated by Brown et al.

Regarding claim 23 Brown et al. discloses a sealed container, for when in use, containing a liquid under pressure, the sealed container having an exterior surface, the exterior surface of the sealed container having a heightwise dimension and a widthwise dimension and at least one temperature-measuring device positioned heightwise dimension on said exterior surface, provided further that said temperature-measuring device measures temperatures in the range of about 34°F to about 94°F (Figure 1).

Regarding claim 24, Brown et al. discloses where the device measures temperatures in the range of about 34°F to about 80°F (Column 12, lines 19-37).

9. Claim 27 is rejected under 35 U.S.C. 102(b) as being anticipated by Bailey, Sr. et al.

Regarding claim 27, Bailey, Sr. et al. discloses at least two substantially parallel strips having temperature-measuring capability (longitudinally spaced, Column 13, lines 24-25).

#### ***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-6 and 9-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al. in view of Brown et al.

Regarding claim 1, Nakayama et al. discloses "Beverage servers and their controlling methods" which has a container having an outlet for a first fluid and an inlet for a second fluid, a container having a first fluid

region, a first fluid being present at an original level of the container, the container, for when in use, having a first fluid at least partially removed from the container forming a second fluid region (Figure 12). What is not disclosed by Nakayama et al. is placing on the container at least one temperature-measuring device, a temperature-measuring device being located in a region of the container where the second fluid region is formed by removal of said first fluid, initially observing a first temperature in the first fluid region when the first fluid is present, subsequently observing a second temperature in the second fluid region of the container after a portion of the first fluid has been removed and correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container. However, Brown et al. discloses a "Liquid crystal level indicator" which has at least one temperature-measuring device located in a region of the container where the second fluid region is formed by removal of said first fluid (Figure 1). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Nakayama et al. to include at least one temperature-measuring being located in a region of the container where the second fluid region is formed by removal of the first fluid as taught by Brown et al. since when using opaque containers one would want to know the amount of liquid remaining in the container. Brown et al. teaches to initially observe the temperature and then observe another temperature in

the second fluid region (Column 12, lines 54-55). Therefore, it would have been obvious to the skilled artisan to modify Nakayama et al. to include initially observing the temperature and then observing another temperature in the second fluid region as taught by Brown et al. since one would want to know the amount of liquid remaining in the container. Correlating the difference between the first temperature and the second temperature to the level of the first fluid in the container is well within the purview of the skilled artisan since that correlation would give the level of the liquid.

Regarding claims 2 and 3, neither Nakayama et al. nor Brown et al. gives particular times at which the temperatures are observed. However, to observe the temperatures when the first fluid is at least partially withdrawn through the outlet and when the second fluid is introduced through the inlet is well within the purview of the skilled artisan since the container can be observed every minute on the minute or hourly.

Regarding claims 4 and 5, Nakayama et al. discloses where the second fluid is a gas (Figure 12).

Regarding claim 6, Nakayama does not disclose a temperature-measuring device being adhered to the container. However, Brown et al. discloses where the temperature-measuring device is adhered to an outer surface of said container as a magnetic strip (Column 8, lines 29-30). Therefore, it would have been obvious to the skilled artisan to modify

Nakayama et al. to include where the temperature-measuring device is adhered to an outer surface of said container as a magnetic strip as taught by Brown et al. since some containers are made of metal where a magnet can be applied.

Regarding claims 9 and 10, Nakayama et al. does not disclose where the container is present in a location of low humidity at the time of the initial observing of the first temperature in the first fluid region of the container when the first fluid is present in the first fluid region of the container and at the time the subsequent observation of the second temperature in the second fluid region of the container after a portion of the first fluid has been removed. However, Brown et al. discloses where the container is present in a refrigerator (cooler, Column 2, line 21-25). Therefore, it would have been obvious to the skilled artisan at the time of invention to modify Nakayama et al. to include where the container is present in a refrigerator as taught by Brown et al. since it is common practice to keep beverages stored in refrigerated containers.

Regarding claim 11, Nakayama et al. discloses where the first fluid is a liquid (Figure 12).

Regarding claim 12, Nakayama et al. discloses where the first fluid comprises beer and where the second fluid comprises carbon dioxide (Column 1, lines 16-23).

Regarding claim 13, Nakayama et al. does not disclose the step of wiping the temperature-measuring device with a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F. However, Brown et al. discloses where the Prior art devices needed the aid of water to activate the thermometer. Therefore, to modify Nakayama et al. to include a water-moistened cloth where the temperature of the water moistened cloth is less than 105°F would have been obvious to the skilled artisan as evidenced by Brown et al. since the devices needed the aid of water to activate the thermometer. Brown et al. overcomes this deficiency in his invention (See column 7, line 1).

Regarding claim 14, it is well known in the art to have a keg pressure below 100 psi.

12. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al. in view of Brown et al. as applied to claims 1-6 above, and further in view of Bailey, Sr. et al.

Regarding claim 7, neither Nakayama et al. nor Brown et al discloses where a plurality of temperature-measuring devices are sequentially located in the regions of the container and where the second fluid region is formed by removal of the first fluid. However, Bailey, Sr. et al. discloses a "System and method for the reduction of secondary trauma" which has a plurality of temperature-measuring devices that are

sequentially located in the regions of the container where the second fluid region is formed by removal of the first fluid (Column 13, lines 24-25).

Therefore, to add a plurality of temperature-measuring device are sequentially located in the regions of the container where the second fluid region is formed by removal of the first fluid to Nakayama et al. would have been obvious to the skilled artisan since that would make it easier to read the temperature from different positions around the container.

13. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nakayama et al. in view of Brown et al. as applied to claims 1-6 above, and further in view of Hof et al.

Regarding claim 8, neither Nakayama et al. nor Brown et al discloses a eutectic measuring device. However, Hof et al. discloses a "Temperature indicating compositions of matter" which has a eutectic measuring device (Column 30, line 41). Therefore, the skilled artisan would have been inclined to modify Nakayama et al. to include a eutectic measuring device as taught by Hof et al. since having a proper temperature range for the liquid is essential. Hof's et al. temperature device is a disposable temperature device.

14. Claims 15-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown et al.

Regarding claim 15, Brown et al. discloses a temperature-measuring device mounted on a magnetic strip having a width, a height, and a thickness, provided further that the dimensionless ratio of said width to said height is about 0.5 to about 10 to about 1 to about 5 (Figure 1). Since the ratio is dimensionless, the Examiner is assuming his own dimensions when reading this claim. Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 16, Brown et al. discloses where the dimensionless ratio of the width to the height is about 0.7 to about 10 to about 1 to about 4 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 17, Brown et al. discloses where the device measures temperatures in the range of about 34 °F about 94°F (Column 12, lines19-37).

Regarding claim 18, Brown et al. discloses where the device measures temperatures in the range of about 34 °F to about 86°F (Column 12, lines 19-37).

Regarding claim 19, Brown et al. discloses where temperature-measuring device can be mounted on an adhesive strip the temperature-measuring device having a width, a height, and a thickness,

provided further that the dimensionless ratio of said width to said height is from about 0.5 to about 10 to about 1 to about 5 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 20, Brown et al. discloses where the dimensionless ratio of the width to the height is about 0.7 to about 10 to about 1 to about 4 (Figure 1). Therefore, to modify the temperature-measuring device to accommodate a specific dimension is well within the purview of the skilled artisan.

Regarding claim 21, Brown et al. discloses where temperature-measuring device measures temperatures in the range of about 34°F to about 94°F (Column 12, lines 19-37).

Regarding claim 22, Brown et al. discloses where the temperature-measuring device measures temperatures in the range of about 34°F to about 86°F.

15. Claims 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey, Sr. et al. in view of Paron et al.

Regarding claim 28, Bailey et al. does not disclose where two temperature strips is a flexible band. However, Paron et al. discloses where one temperature strip is a flexible band (flexible substrate, Column 1, line 60). Therefore, to provide two substantially parallel strips that are affixed to a flexible band would have been within the purview of the skilled

artisan since having a flexible band makes it easier to place onto a cylindrical container.

Regarding claim 29, Bailey, Sr. et al. discloses a plurality of longitudinally spaced strips (Column 13, lines 24-25). The Examiner is assuming plurality to be a number more than 3. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify Bailey, Sr. et al. to include where there are at least four substantially parallel strips (longitudinally spaced strips) since having a plurality of strips makes it possible to read the temperature at different positions around the container.

Regarding claim 30, Paron et al. discloses where one temperature strip provides a color change by 2°F. Therefore, it would certainly be within the purview of the skilled artisan to provide a color change at least 15° F apart for the two substantially parallel strips.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' K. Jackson whose telephone number is (703) 305-1522. The examiner can normally be reached on Mon.-Fri. 7AM-4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (703) 305-4705. The fax phone numbers for the organization where this application

or proceeding is assigned are N/A for regular communications and N/A for  
After Final communications.

Any inquiry of a general nature or relating to the status of this  
application or proceeding should be directed to the receptionist whose  
telephone number is (703) 308-1782.

A.J.   
November 4, 2002

  
DANIEL S. LARKIN  
PRIMARY EXAMINER